IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

WP(C).No. 5098 of 2007(F)

PETITIONER:
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1. K.M.PANKAJAM, AGED 49 YEARS,
W/O.N.K.SASIDHARAN, NADETHETHU HOUSE, AMBALLUR PO.

2. N.K.SASIDHARAN,
AGED 54 YEARS, S/O.LATE KUMARAN,
NADETHETHU HOUSE, AMBALLUR P.O.

BY ADV. SRI.K.N.CHANDRABABU

RESPONDENTS:
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1. KERALA FINANCIAL CORPORATION,
REP.BY THE MANAGING DIRECTOR, VELLAYAMBALAM,
THIRUVANANTHAPURAM- 695 033.

2. THE CHIEF MANAGER,
KERALA FINANCIAL CORPORATION, BRANCH OFFICE,
FINANCE TOWER, KALOOR, COCHIN-17.

3. DEPUTY TAHSILDAR (R.R),
KERALA FINANCIAL CORPORATION, BRANCH OFFICE,
FINANCE TOWER, KALOOR, COCHIN-17.

BY ADV. SRI.M.M.SAYED MUHAMMED, SC, KFC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

WP(C).No.5098 of 2007-F

Dated this the 19th day of February, 2007.

JUDGMENT

The Ist petitioner was a defaulter to the first respondent Corporation in relation to a loan availed of by her, for running an industry. Since the business fell, she could not pay the loan amount. The petitioner moved for one-time-settlement facility. The same was granted as per communication dated 18-3-2003. The petitioner could not availed of the said facility. Later, again she was granted extension of time to remit the amount due as per the O.T.S. Scheme by Ext.P1 dated 8-7-2003. This time also she failed to pay the amount. So, the O.T.S. facility was cancelled in 2005. Thereafter, Ext.P2 revenue recovery notice has been issued on 22-12-2006 proposing to sell the property on 20-2-2007. The petitioner submits, she has filed Ext.P3 representation claiming the benefit of O.T.S. Scheme which is produced as Ext.P4.

2. The learned Standing Counsel, upon instruction, submitted that in 2005 the Ist petitioner was granted extension of second time, under the O.T.S. facility to pay the amount on or before 31-10-2005. She could not availed of that benefit. It is also submitted that Ext.P3 has not been received by the respondent. It is also submitted that the

time limit for granting the benefit under Ext.P4 is already over.

3. The learned counsel for the petitioners relied on clause III of para 8 of Ext.P4 guidelines and submitted that the beneficiaries of O.T.S. facility are entitled to pay of the O.T.S. amount sanctioned with belated interest. It is also submitted that Ext.P4 policy itself could be changed by the Board , if necessary, as evident from Clause 8 of para VIII of Ext.P4.

4. The petitioner has failed to avail the O.T.S. facility extended to her. Nothing prevented her from taking advantage of the conditions contained in Ext.P4, in time. Therefore, the action of the respondents in taking revenue recovery steps and sale of the mortgaged property cannot be said to be illegal or unauthorised or without jurisdiction. In the absence of any such finding, this court cannot interfere with the same. Even assuming that Ext.P3 is received and pending, still I feel that it is not a ground not to interfere with Ext.P2. Ext.P2 is dated 22-12-2006 and on the eve of the same, the first petitioner claims that she has filed Ext.P3 on 8-2-2007. On receipt of such a representation from a defaulter who repeatedly failed to avail the benefit of O.T.S.Scheme the K.F.C. does not owe any duty to stop the same and wait and see whether the petitioner will avail the facility again. In the absence of any duty on the Corporation

and a corresponding right on the petitioners, this court is not justified in interfering with the sale notified.

In the result, the writ petition fails, and it is dismissed. But, this judgment will not affect the rights, if any, of the petitioners to pay of the entire amount under O.T.S. Scheme plus interest and redeem the property.

The writ petition is disposed of as above.

K.BALAKRISHNAN NAIR,
MS JUDGE.